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MODERN WOODMEN OF AMERICA *v.* LAWSON.

Sept. 9, 1909.

[65 S. E. 509.]

**1. Insurance (§ 442\*)—Cause of Death—Use of Intoxicants.**—Wood alcohol being a narcotic poison, and not an intoxicating liquor, an insured who died from drinking wood alcohol taken by mistake for grain alcohol did not die, directly or indirectly, from the use of intoxicating liquor.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 442.\* 9 Va.-W. Va. Enc. Dig. 356.]

**2. Insurance (§ 292\*)—Contract—Defenses—Misrepresentation.**—Under Pollard's Code Biennial of 1908, § 28, p. 483, providing that no answer to interrogatories in an application shall bar a recovery unless such answer was willfully false or fraudulently made or was material, if insured falsely stated in his application that he had not been treated by a physician within the last seven years preceding his application, no recovery could be had on the policy if such statement was material or willfully or fraudulently made.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 691, 692; Dec. Dig. § 292.\* 9 Va.-W. Va. Enc. Dig. 351, 354; 14 id. (Supt.) 656.]

**3. Evidence (§ 20\*)—Judicial Notice—Business Methods.**—It is a matter of common knowledge that the business of insurance is necessarily transacted through agents.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 24; Dec. Dig. § 20.\* 7 Va.-W. Va. Enc. Dig. 762, et seq.; 9 id. 355.]

**4. Insurance (§ 87\*)—Powers of Agents—Effect of Provisions of Policy.**—An applicant for insurance may rely upon the superior knowledge of the agent, and, in absence of notice of limitations upon his powers, may assume that his authority is commensurate with his employment, and act in good faith upon information and instructions given by him relating to preparing the application.

[Ed. Note.—For other cases, see Insurance, Dec. Dig. § 87.\* 7 Va.-W. Va. Enc. Dig. 762, et seq.; 9 id. 355.]

**5. Insurance (§ 379\*)—Estoppel—Knowledge of Agent—False Answers in Application—Life Policies.**—Questions in an application as to whether insured entirely abstained from intoxicants, and as to how long he had totally abstained, were answered "Yes" and "Always," and questions whether he was ever intoxicated and was intoxicated daily were answered "No," the answers being inserted by the deputy head clerk of the society without giving insured an opportunity to answer, the former remarking: "I know you don't. All of us take a drink. It means a straight drunkard, stays drunk all the time." The

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

report of the society's physician stated that insured's personal habits and physical and mental condition made his prospects to attain the full life expectancy first class, but at the time the deputy clerk, examining physician, and other local officers knew of the falsity of the statements in the application as to insured's habits in the use of intoxicants. Held, that the society was bound by the knowledge of its agents, and was estopped from claiming a forfeiture because of the false statements in the application.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 999-1015; Dec. Dig. § 379.\* 9 Va.-W. Va. Enc. Dig. 353.]

NORFOLK & W. RY. CO. v. BOARD OF SUP'RS OF CARROLL COUNTY.

Sept. 9, 1909.

[65 S. E. 531.]

**1. Counties (§ 208\*)—Board of Supervisors—Right to Sue.**—Under Code 1904, § 825, authorizing the board of supervisors of any county to sue as to matters connected with their duties, and section 944-a1, providing that boards of supervisors shall have the control of the county roads, etc., the board of supervisors of a county may sue a railroad company to compel it to build a sufficient new highway in lieu of the public highway taken by it for its road.

[Ed. Note.—For other cases, see Counties, Dec. Dig. § 208.\* 3 Va.-W. Va. Enc. Dig. 693.]

**2. Railroads (§ 95\*)—Use of Public Highways for Road—Construction of New Highways.**—A railroad company taking possession of a public highway for its use for its road, while Code 1887, § 1094, providing that a railroad may close or alter a public road only when it shall have made an equally convenient road in lieu thereof, was in force, must provide an equally convenient highway in lieu of the highway taken, and the fact that it proposed to build an equally convenient highway if permitted by the county court to occupy the existing highway, and that the court accepted the proposition and determined the plans to be observed in building the new highway, did not change the legal duty into a mere personal obligation.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 274-283; Dec. Dig. § 95.\* 12 Va.-W. Va. Enc. Dig. 935, 938, 954.]

**3. Highways (§ 23\*)—Right of State.**—Public highways belong to the state, and the board of supervisors of the county in which a highway is located represents the state, and the Legislature alone represents the public at large with paramount authority over public highways.

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.